

Civil Commitments from a Judge's Perspective

Judge Randy T. Rogers
Butler County Probate Court

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This is the twentieth article from the Supreme Court of Ohio Advisory Committee on Mentally Ill in the courts about effectively dealing with offenders with mental illness. This article is directed primarily at probate judges. However, almost all judges face these issues relating to dealing with persons with mental illness in their courtrooms. This is one Ohio Judge's perspective.

"I find that the respondent is a mentally ill person subject to hospitalization by court order," the judge pronounced. Hearing those words, the respondent, wearing only a hospital gown and a robe her mother brought her from home, looked away not fully understanding the import of what she had just heard. Seated nearby, her mother softly smiled. To the mother, the judge's pronouncement was a ray of hope in what for her had been a difficult journey down a dark pathway filled with dead-ends. "At least now," her mother thought, "she will get some help."

The civil commitment process is an effective tool in helping mentally ill persons who would otherwise revolve through the doors of hospitals and jails or assume their place among the nations homeless. In Ohio the civil commitment process is administered by the state's Probate courts. Following the mandates of a series of statutes found in chapter 5122 of the Revised Code, Probate judges and their magistrates regularly navigate the uncharted regions in which the demands of due process sometimes conflict with the exercise of *parens patriae* power and the desire to help those who cannot or will not help themselves.

Probate courts regularly deal with mental health issues. In our Probate Court there are more than 600 guardianships pending and at least a third of them involve wards diagnosed with some form of mental illness. Our Court's civil commitment docket averages 100 cases pending, each of which involve a person with a severe mental illness and whose circumstances are such that the Court has ordered his or her commitment, either as an inpatient in a hospital, or as an outpatient in a less restrictive setting.

Each civil commitment case requires a Probate court judge or magistrate to balance competing legal interests. In the case of any person facing involuntary commitment to a mental hospital or to a less restrictive setting, the individual's right against involuntary confinement depriving him or her of liberty must be balanced against the state's interest in committing those who are mentally ill.¹ But even though an involuntary civil commitment constitutes a significant deprivation of liberty requiring due process protection, there are times when that commitment should be made.

In Ohio numerous due process protections are afforded to persons before they are committed involuntarily. Every civil commitment case begins with the filing of an affidavit in a Probate court. The affidavit must allege specific facts which indicate probable cause to believe that a person has a substantial disorder of thought, mood, perception, orientation or memory.² These affidavits are usually filed by a family member or a person from the mental health treatment community familiar with the person's mental status. Within five days of the filing of the affidavit, the matter is normally brought before a judge or magistrate for a hearing. Counsel is provided to the person thought to be in need of commitment. If the evidence is clear and convincing that commitment is necessary, the judge or magistrate issues an order. If after 90 days the person still meets the criteria for involuntary civil commitment, a new hearing, with new evidence, must be held, which may result in a continued commitment.

The criteria necessary for involuntary civil commitment is set forth by statute.³ To meet the criteria, there must be evidence that the person either represents (1) a substantial risk of physical harm to self, (2) a substantial risk of physical harm to others, or (3) a substantial and immediate risk of serious physical impairment or injury to self, or (4) is in need of treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or himself.

Our Probate Court often uses a form of civil commitment that is referred to as "outpatient commitment" or "assisted outpatient treatment." This form of commitment is authorized by statute⁴ and, compared to inpatient hospitalization, is preferred as a less restrictive alternative.⁵

An effective civil commitment process must involve both inpatient and outpatient treatment. According to mental health professionals "[a]ny humane and comprehensive

quality mental health treatment system must make provision for both inpatient and outpatient involuntary treatment for those severely and/or persistently mentally ill who can benefit from such approaches." ⁶

While presiding over civil commitment cases, one of the more difficult determinations a judge or magistrate must make is to determine what level of insight a person has concerning their mental illness. How this issue is decided affects whether a commitment is made and how long a commitment will be extended.

It is not uncommon for a person suffering from a mental illness to have little or no insight about the existence or nature of their illness. I have presided over many cases which involved such persons and I have concluded that a major reason why so many severely mentally ill people are not receiving treatment is that, because of the effects of the illness on their brain, they lack awareness of their illness.

Dr. Xavier Amador, a psychologist whose brother has schizophrenia, has arrived at the same conclusion and has detailed his findings in a book, I Am Not Sick, I Don't Need Help. Empirical studies have revealed that "anosognosia," which means "unawareness of illness," is a syndrome commonly seen in people with serious mental illness and some neurological disorders. Studies have shown that approximately half of all patients with schizophrenia⁷ and mania⁸ have markedly impaired awareness of their illness and are similar in some respects to some patients who have had strokes or who suffer from Alzheimer's.

Because they lack insight, many mentally ill persons not receiving treatment end up in courts other than Probate courts. Instead of being brought to the court where one important judicial focus is a person's treatment plan, these persons end up in other courts, on the receiving end of jail sentences and civil protection or restraining orders, with little likelihood of receiving much needed treatment.

In a perfect world every person with significant psychiatric symptoms would, on a voluntary basis, "have access ... to [an] accurate and comprehensive diagnosis ... [and] ... an individualized treatment plan that is delivered at the right time and place, in the right amount ..." ⁹ Unfortunately, ours is not a perfect world.

Our Probate Court is by no means a perfect court, but we do the best we can with what we have. Our civil commitment process is not a perfect process, but it has proven to

be a valuable and presently available resource for meeting the needs of many persons with severe mental illnesses. For the families who face the challenges posed by mental illness, the civil commitment process can produce a ray of hope on a path often dimmed by clouds of frustration and uncertainty.

¹ *In re Miller* (1992) 63 Ohio St. 3d 99, 585 N. E. 2d 396.

² R.C. 5122.01(A) and R.C. 5122.11

³ R.C. 5122.01(B)

⁴ R.C. 5122.15(C).

⁵ R.C. 5122.15(E).

⁶ APA Task Force, "A Vision for the Mental Health System," April 3, 2003

⁷ Amador, X.F., Strauss, D.H., Yale, S.A., and Gorman, J.M. Awareness of illness in schizophrenia. *Schizophrenia Bulletin*, 17:113–132 (1991).

⁸ Ghaemi, S.N. Insight and psychiatric disorders: a review of the literature, with a focus on its clinical relevance for bipolar disorder. *Psychiatric Annals*, 27:782–790 (1997).

⁹ APA Task Force, "A Vision for the Mental Health System," April 3, 2003.